

COMMENTS ON FCC NOTICE OF PROPOSED RULE MAKING

In the matter of Modernizing the E-Rate Program for Schools and Libraries

WC Docket No. 13-184

I. INTRODUCTION

1. First and foremost, to accomplish the goals of the President's national ConnectED initiative, the funding cap for E-rate, regardless of any program restructuring, will need to be increased significantly. The current demand for funding based only on the Priority One (Internet Access and Telecommunications) is already using ALL the available funding. This is evidence that demand for broadband capacity within schools and libraries is continually growing and will continue to increase.

II. GOALS AND MEASURES

1. Setting targets for the performance of school and library performance could move schools and libraries towards obtaining increased levels of necessary bandwidth to provide digital education and library services. In Minnesota, evidence suggests no matter what level of bandwidth is provided, it is soon used as teachers, students, librarians, and library customers quickly discover the new applications the increased bandwidth can deliver. The difficulty lies in setting targets—depending on what factors they are based on. If targets are set too low, they will quickly be exceeded by need, and if they are set too high, schools and libraries may purchase much more capacity than they currently need. One way to tackle this might be to establish ranges of capacity based on the number of students, teachers and library customers served. In our state, Minnesota, we have regional networks that serve all but a small percentage of our public school districts. Our experience has indicated that the appetite for bandwidth continues to grow as more applications for the classroom become available and public demand for library services increases. The amount needed by any school or library really depends on how they are using it, what types of digital resources are being used, and how the traffic is managed (or not managed.) The SETDA targets described in the FCC NPRM are modified every few years and increased as the SETDA group continues to study the issue of broadband and how it is being used in K-12 schools. If the SETDA targets are used, they should be studied in terms of their source and validity.
2. There are several data collection efforts underway in states to determine how much broadband is used by schools and libraries. The problem with relying on such usage data is that it may not represent actual need – schools and libraries currently limit their procurement to what is affordable and supported through programs such as the E-rate. In working with regional networks in Minnesota, broadband access is very much limited by school district and library budgets and affordability. In our experience, broadband access has become more affordable over the years, but school districts and libraries still have financial constraints that govern purchasing.
3. In terms of wireless capacity within school buildings and libraries, again, this is entirely reliant on what is going on within that facility in terms of digital education and library services. A school that is working on an initiative with iPads or other tablets that require access, or pursuing a bring your own technology initiative with students obviously has a much greater need for wireless capacity than one that does not. The library trying to support a wireless infrastructure to allow customers access with their own devices will have various needs depending on the size and architecture of the building. Any establishment of targets for wireless would need to include a range of recommended capacities depending on the number of users and devices. It is not unusual today to see people in both schools and libraries carrying multiple devices and accessing wireless with all of them at the same time.

4. In terms of trying to gather data through the e-rate application process on capacity needs, it must be stressed that such data collection should not result in an undue burden on schools and libraries. FCC should also be clear about the purpose of the data collection and clearly define the data elements. The e-rate application process would only be made more cumbersome if significant information requirements are added.
5. If the FCC were to require schools and libraries to have bandwidth performance measuring equipment within buildings, funding support should certainly be provided to pay for it. If it is not, there is an unfunded mandate created in much the same way that exists for CIPA since E-rate does not support the funding of technology protection measures, yet requires them for E-rate eligibility.
6. The most simplistic way to gather data nationally on speed and capacity would be to have a standard speed test tool and data collection instrument. Schools and libraries could be directed to those tools at certain points at time to provide data. School districts and libraries participate in a huge variety of differently configured networks to access the Internet. Without a consistently defined measurement tool, the data consistency and data elements will be widely open to interpretation and it will be difficult to draw accurate conclusions about whether targets or performance measures are being met. A sampling of school districts in different size ranges and libraries in different sized communities using a consistent data collection instrument would be the optimal solution if the FCC wishes to pursue collection of performance data on broadband connections.
7. The SECA proposal that USAC retain an independent third party to perform an annual analysis of the barriers to schools and libraries participating in the E-rate program is valid suggestion. Another item for analysis would be the consistency between USAC procedures and how reviewers and auditors interpret them. There have been many instances in our state where an E-rate application is filed the same way and approved for many years in good faith by the applicant, but change in a program reviewer or payment review then results in focus on a question that the applicant has never been asked and funding is recalled or denied. The review process in PIA is inconsistent. It is also not made clear to applicants what occurs during this process. The Item 21 attachment process is also not sufficient to submit all the information that the instructions require, the requirements for what applicants should supply are not clear, and applicants are often penalized for minor mistakes that come as a result of this process.
8. In terms of data collection, most data relating to the E-rate process would likely be considered public, unless it involves proprietary information from service providers. Basic information of speed and cost would probably not be a big concern since most school district and library procurement documents are public record already.

III. ENSURING SCHOOLS AND LIBRARIES HAVE AFFORDABLE ACCESS TO 21ST CENTURY BROADBAND THAT SUPPORTS DIGITAL LEARNING

1. Since the amount of funding appears to be a matter of significant concern, the discount matrix could be revised in a phased way that would still accommodate the needs of schools and libraries. For example, instead of a 20-25% discount for schools with no free and reduced lunch students, perhaps that discount could be lowered to 15-20%. The top discount could be capped at 75% - 80%. This is still a substantial savings for schools and libraries, and if the changes were phased, the schools and libraries would have the opportunity to adjust budgets accordingly. In addition, when schools and libraries have a stake in terms of financial commitment, there is an increased probability that more attention will be paid to cost effectiveness and the appropriate procurement procedures. In addition, the distinction between rural and urban schools and libraries could be removed. Rural schools and libraries may experience a higher cost for bandwidth, but larger urban schools or libraries serving more students and customers have the need for more capacity so the distinction in cost differential between the two becomes somewhat blurred.

2. Support for basic phone services, long distance, and cellular service should be phased out of the program. These have little to do with bringing digital resources to students and teachers. The exception here may be libraries, who may rely on long distance to provide library services such as homework help, or renewal of materials by phone, or whose geographic setting may require long distance for some customers.
3. Prioritizing funding for high capacity broadband deployment should be technology neutral. There may be areas where fiber is not practical or otherwise cost prohibitive for the service provider and community to build it out. If there would be a way to incent providers to build fiber out, that would be optimal but there may be legalities to prohibit that practice.
4. CIPA is an unfunded mandate for schools. Schools are required to have Internet filtering in place to be eligible for E-rate, but the E-rate program will not support funding for Internet filtering. The Internet Safety/Acceptable Use policy and education for students on Internet safety and cyber bullying requirements are reasonable. Education on responsible use, and not restrictions on access should be the solution. USAC should clearly define the types of documentation they will accept to demonstrate that these things are in place.
5. The Eligible Services List needs to be updated, organized more clearly, and the language should be less open to interpretation. For example, it is sometimes difficult to determine if a component or service is eligible or ineligible and this leads to interpretations on the list by vendors that get very confusing for applicants. Services that are “old” or outdated technology should be eliminated – applicants should be seeking up to date technology and services. The list should clearly distinguish between eligible and ineligible.
6. Schools and libraries still rely on websites and e-mail to conduct business and deliver service. “Free” services are never entirely free – there still needs to be some level of administration to maintain a website and e-mail policies. These services should still be supported because they are used in the delivery of education and library services. A lot of districts and libraries use webhosting services because they do not have server capacity or technicians to maintain servers on site. If they shop wisely, many of these services are a good value.
7. Placing limits for eligible services that are only available to students and library patrons would be a nightmare to monitor and administer. The services funded by E-rate should be allowed for purposes aligned with the delivery of education and library services for students, customers, teachers, and other staff in these institutions.
8. Phase out support for cellular phones and air cards. The cost allocation factor for personal use creates audit complications for applicants. In addition, many schools and libraries only provide them for administrator level employees, if at all.
9. Priority Two, if it is continued, should be limited to routers, wireless access points, and internal cabling as described in the SECA proposal. This would be a better use of funds and would save money to be used on the recurring cost of high-speed connections. Again, if schools and libraries need to invest in some part of their own infrastructure that will hopefully result in more careful planning and cost effective procurement. It seems the vast majority of issues around fraud, waste and abuse stem from the procurement of Priority 2 services. If Priority 2 is maintained, the two-in-five rule (which does not work) should be eliminated and a more equitable way of providing funding to all applicants for these types of services determined.
10. If eligibility of basic telephony is phased out, will this create a difficulty for the universal service fund collection since the fees are collected on basic phone and long distance services?
11. The application process would be streamlined by having school districts apply as one entity with all of their schools on the application, rather than school by school. The school district weighted discount should be used. This would simplify the process and make it easier for USAC-SLD to verify discount levels. There will still be single applications from entities such as nonpublic schools and charter schools. If a school district has to apply as an entity, then that means they will have to communicate and plan among buildings, which may increase service efficiency.

12. Simplified allocation of funds to all schools and libraries would be desirable and would hopefully streamline the process of application and funding. The issue that rural schools are paying more is not always necessarily true. While the cost of service delivery may be higher for the middle and last mile in rural areas, urban schools tend to have higher student and teacher populations that need to be supported with higher levels of bandwidth. Whatever simplified allocation of funds process is put into place, it should consider factors of poverty, location, and school district and public library need. The same would hold true for allocation of library funds.
13. Consortia applications have the potential for efficiency and cost savings. In Minnesota, we have several large consortia of school districts and libraries that aggregate network needs and work towards cooperative purchasing of services. Consortia applications should be continued. The FCC may even want to consider incentives for school districts and libraries to work together in consortia. The Minnesota state program that supports broadband connectivity for school districts after E-rate (telecommunications/Internet access equity aid) provides a financial incentive to school districts that operate as part of cooperatively purchased networks in regions.
14. In any iteration of a simplified allocation of funds to schools and libraries, local investment should be a requirement. The current program requires even the most economically challenged schools to pay at least a portion (10%) of the cost of services (90% discount level). Requiring a portion of local investment can result in improved planning, network efficiencies, and accountability. While a 25% matching requirement may strain the budgets of poorer school and library communities, keeping at least a 10% matching requirement at the local level would not seem unreasonable since that is what occurs now.
15. Competitive bidding rules are important. The problem inherent in the E-rate competitive bidding requirements is that they layer additional requirements on schools and libraries that may already have competitive bidding procedures dictated by state and local governments. The FCC could help the situation by offering an either/or solution. The school district must first follow any state or local competitive bidding requirements, but if none exist, they should follow the E-rate program competitive bidding requirements. For example, in Minnesota, school districts must issue an RFP and go through a formal bidding process for any expenditure of \$100,000 or more in most cases. For those service procurements less than that amount, E-rate procedures could be followed.
16. Multi-year contracts should continue to be allowed. These provide school districts and libraries with improved pricing options from providers and incentives for providers to invest in local infrastructure.
17. If the funding cap is increased, and in order to reach the goals of ConnectED and the National Broadband Plan, it will need to be increased, the increase should be permanent and sustained. Experience in Minnesota and in many other states provides evidence that networks are never FINISHED. There is always a need to upgrade infrastructure and capacity over the passage of time. Either an ongoing investment to provide schools and libraries with sufficient broadband capacity is a national priority or it is not. Temporary infusion of funding will only serve to penalize schools and libraries that have already made investments out of their own pocket and will stimulate development only on the short term, forcing schools and libraries to continually invest in aging infrastructure in the future or dial back levels of access.

IV. MAXIMIZING THE COST EFFECTIVENESS OF E-RATE FUNDS

18. In Minnesota, consortia have significantly enabled affordable Internet access for schools and libraries through cooperative purchasing and regionally centered network management. There are very few cases of consortia application for internal connections simply because the funding for Priority 2 (Internal Connections) has been provided only to the 80% discount level and above for

the past several years. This puts Priority 2 funding out of reach for the majority of schools in Minnesota.

19. Research and education networks formed in states through Internet2 and other partnerships should be supported by the E-rate program in consortia applications or through applicable state master contracts. Applicants, however, should not be required to purchase from state or regional contracts since there are often providers not on these contracts that will provide equitable service and lower pricing depending on the location of the school or library. Connections for schools and libraries to the Internet 2 Research and Education Networks should be eligible and supported through the E-rate program.
20. The FCC should not attempt to create a formal bulk-buying program for E-rate supported services. This would establish a layer of bureaucracy for procurement for many schools and libraries and is not viable on a nationwide scale. With the constant evolution in technology and rapid demand for broadband access, it is doubtful that a large nationwide program could be developed that would be flexible and expedient enough to meet the needs of schools and libraries.
21. Transparency of E-rate funding and spending is already provided to some extent through the search tools available on the USAC website. In many states, expenditure data from schools and public libraries is considered public and is published. If a further level of detail is needed, the FCC could consider directing USAC to make deeper levels of information available through the web search tools already available on the website. Most members of the public, school boards, and parents, look to their local school or library boards for information on school spending priorities and processes. It is doubtful that the FCC would be a “go to” source for most of these constituents beyond what it already provides through USAC.
22. When E-rate applicants receive no other competitive bids, there are a number of good reasons. Applicants should not be made to jump through additional hoops or be required to seek out additional vendors for service who may not be convenient to the service area or not competitive. The current process allows applicants to reach out to additional vendors when they receive only one bid and to document one-bid response situations. Receiving one bid does not mean a competitive bidding process was not attempted in good faith, nor does it mean that a cost effective procurement was prevented. No additional requirements should be added because they will simply create barriers to schools and libraries in these situations for choosing viable services that meet their local needs.
23. See comment 15 about competitive bidding. Schools and libraries should be required to follow state and local rules first and resort to E-rate competitive bidding processes when state and local regulation does not apply.
24. The requirement to have a contract signed by the Form 471 has caused applicants to miss out on funding because the requirement was not realized or was overlooked in the process. In addition, some services are done on a month-by-month basis and do not require a contract. FCC may wish to consider a revised deadline for this, such as 30 days prior to the service start date. That may assist applicants who have trouble getting to the right person in their organization or in the service provider organization for formal signature.
25. Benchmarks, bright lines, and other measures for cost effectiveness may be difficult to determine. What may make sense in terms of cost effectiveness for one school or library may not make sense in another one. If the FCC is requiring some form of competitive bidding process to be followed and has helpful guidance on determining cost effectiveness based on FCC competitive bidding rules, particularly specific examples of what would not be considered a cost effective purchase decision – that should be sufficient.
26. Schools and libraries may seek more expensive eligible Priority 1 services rather than applying for less expensive Priority 2 options because the funding for Priority 2 is basically nonexistent at this point. The FCC could remedy this by limiting the Priority 2 funds to basic installation and cost of equipment such as routers and switches to deliver the Internet to school and library buildings.

- There should also be a way to limit applicant access to Priority 2 funds on a cycled basis other than the current two-in-five rule, which has not had any impact.
27. Multi-year contracts should be allowed, but obviously contracts of great length can limit a school or library from seeking new services, expanding capacity, or finding a more cost effective solution. It should also be acknowledged that the competitive bidding process can be very labor-intensive, which is why consortium purchasing is such a good idea. If the FCC considers a limit on multi-year contracts, a medium ground would be a 3-5 year contract with two voluntary extensions. This would provide a school, library or consortia with leverage to use with providers and gives providers a sound basis for longer-term investment in an anchor tenant.
 28. Technology planning should be taking place in every school district and library/library system as a good business practice. Unfortunately, when FCC removed the technology planning requirement from E-rate for Priority 1, this sent a message that planning is not important. The other problem with the requirement was that some schools and libraries were developing plans solely for purposes of E-rate, which then sat on a shelf and were not critical to the implementation of technology. FCC should require development of a technology plan in alignment with a school or library strategic planning process, but suspend the requirement that the technology plan be approved by an authorized approver. The technology plan existence could then be documented by a certification on one of the E-rate forms. That way, schools and libraries would have the flexibility to plan within normal strategic planning processes and timelines already in place within their organizations. State agencies and other organizations currently designated as approver organizations would not have the added administrative burden of approving technology plans.
 29. FCC/USAC should require online filing of all forms. There is no reason any applicant should have to use paper forms in this day and age, unless it is a case of extreme hardship, such as a national disaster.
 30. The SECA recommendation presented in #229 on the comments document regarding online access and historical access to E-rate documents should be adopted.
 31. Transparency of the USAC process for PIA needs to be increased. PIA review stringency tends to be inconsistent. Applicants are assigned to multiple reviewers and are asked for identical documentation more than once. Applications sit in review cycles for too long without any outreach to the applicant. If an application is under any kind of review or investigation, the applicant should know that and have the opportunity to respond. There is also a need for some PIA reviewers to be provided training in good customer service. PIA managers should be readily accessible to applicants who are having an issue with an individual reviewer. Contact information for management of SLD and E-rate Ombudsman should be published and available.
 32. Cost allocations are usually subjective and difficult to document reliably. Situations where they are required should be eliminated. The cost associated with these is typically so small it is hardly worth USAC investing the time and resources to scrutinize – either a service is eligible or it is not.
 33. If a multi-year contract is signed, and the conditions remain the same for all the years of the agreement, the following years of application should be streamlined. For example, perhaps the applicant needs to only submit updated information on free/reduced, increased service capacity or whatever statistics are needed to approve the application for the current year.
 34. If multi-year contracts are time-limited, a reasonable requirement would be 3-5 years, with two one-year voluntary extensions for a total time of no more than seven years.
 35. Simplifying and clarifying the Eligible Services List is highly desirable. Simply having one category for telecommunications/Internet access would be a good first step. Clear designation between eligible and not eligible would also be helpful. As it is published now, those factors can be muddled and unclear.
 36. Compliance with CIPA should be limited to one of the forms.
 37. USAC should publish figures on how much E-rate funding is provided each year vs. how much is recovered based on issues of fraud, waste, and abuse. This would provide Congress and the FCC

with a realistic picture of how much fraud, waste, and abuse actually exists. Statistics indicate most of this occurs in Priority 2 where large purchases of equipment and services are involved. If Priority 2 services were more specifically limited, these situations could be avoided. In addition, audit interpretation of rules is often inconsistent and interpreted by auditors more stringently than normal interpretation of program rules would necessitate. As an example, desk audits of payments made to applicants are now honing in on equipment that is leased to the applicant as part of service that is eligible Priority 2 equipment covered under Priority 1 services because it is placed at the school or library site by the provider and billed as part of service. Audits are now coming back saying this equipment is ineligible, even though it meets the requirements listed on the SLD website, because it wasn't "pre-approved" in the application review. Other than the inadequate Item 21 process, there is no specific requirement to get this equipment "pre-approved."

38. Applicants may have to request higher levels of funding than results in the disbursement process due to the necessity of making estimates when working through the application process timeline – they may not have received all the information needed to exactly pinpoint costs, such as a consortium applying for multiple schools and libraries that is trying to gather information from members on how much capacity is needed in the coming year. Applicants should not be penalized for this. There are often unanticipated savings that occur during the course of installation or upgrade. Rather than penalizing applicants for saving money, FCC should require a Form 500 submission three to six months into the program year. That should allow USAC to more accurately pinpoint funds that can be repurposed and committed for the funding year.
39. Making direct payments to applicants under the BEAR process with a report to the service provider would remove a time consuming step in the reimbursement process.
40. Applicants sometimes fear the appeals process because they are afraid appeals may trigger a retaliatory action from USAC such as an audit or delay of a funding commitment for further review.
41. For CIPA, schools should not be held responsible in terms of CIPA compliance for what happens with a school-owned device off campus and when it is not on the school's network, other than through existence of a policy of responsible/safe use when using school equipment. It is too costly and too difficult to monitor use on other networks when the device is out of the schools' control. Education, not regulation, is the solution to this problem. The FCC is already requiring education to students on Internet safety and cyberbullying as part of the CIPA certifications.
42. In determining poverty/economic indicators in conjunction with E-rate discounts, FCC should specify the sources of data in rules and offer those as options or direct schools and libraries to use reports filed with the state departments of education. Beyond that, the process will become too confusing and burdensome for schools and libraries to comply with – especially if there are additional data collection requirements common only to the E-rate program.
43. There is a proposal to extend the documentation requirements of E-rate to ten years from the current five. It is unclear what the benefits of this additional requirement are, or what FCC hopes to achieve with this requirement. This should be clarified before any rule change is made.

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